



APPROVED

**SCOTTSDALE PLANNING COMMISSION
CITY HALL KIVA
3939 NORTH DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA
FEBRUARY 22, 2006**

VERBATIM REGULAR MEETING MINUTES

PRESENT: Steve Steinberg, Chairman
James Heitel, Vice-Chairman
David Barnett, Commissioner
Kevin O'Neill, Commissioner
Eric Hess, Commissioner (arrived 5:12)
Jeffrey Schwartz, Commissioner

ABSENT: Steven Steinke, Commissioner

STAFF PRESENT: Lusia Galav
Sherry Scott
Tim Curtis
Kira Wauwie
Frank Gray
Donna Bronski
Sherry Scott

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Steinberg at 5:08 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MINUTES REVIEW AND APPROVAL

1. February 8, 2006 (including the Joint meeting and the Study Session)

COMMISSIONER BARNETT: Yes. One small change on February 8, regular meeting minutes, page 3, second paragraph, "Chairman Steinberg reiterated the importance of this application as the first monopalm cell site in south Scottsdale," not north Scottsdale.

CHAIRMAN STEINBERG: Okay. Thank you. Any other comments. If not could we get a motion to approve the minutes.

COMMISSIONER BARNETT:

SUBJECT TO THAT ONE COMMENT, I'D LIKE MOVE FOR RECOMMENDATION FOR APPROVAL FOR THE FEBRUARY 8, 2006 SCOTTSDALE PLANNING COMMISSION MEETING AND STUDY SESSION MINUTES.

CHAIRMAN STEINBERG: Okay. Thank you Commissioner Barnett. So we have a motion, do we have a second?

COMMISSIONER SCHWARTZ:

SECOND.

CHAIRMAN SCHWARTZ: Seconded by Commissioner Schwartz; all in favor. Any opposed?

THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF FIVE (5) TO ZERO (0).

CHAIRMAN STEINBERG: We have a lot of continuances tonight. But first I'm going to turn—

COMMISSIONER SCHWARTZ: I have a comment, if you wouldn't mind.

CHAIRMAN STEINBERG: To Commissioner Schwartz.

COMMISSIONER SCHWARTZ: Thank you. Frank, at the hearing in December I had requested for an initiation for the update of the Transportation Master Plan for light rail. A number of conversations occurred where we weren't sure of the purview of which Board. And afterwards, I think finally it was determined that it was the purview of the Planning Commission to update the Master Plans. So I'm a little confused, because we've had that conversation several months ago and we haven't seen an initiation on our agenda. When are we expecting that?

MR. GRAY: Commissioner Schwartz, through the Chair, I'm not sure of the date and will call you tomorrow, but the Transportation Master Plan work program calls for a joint study session with the Planning Commission here very shortly. There's an update that we're getting I think in two weeks- is it? What? Oh, tomorrow, it's tomorrow – that we're getting from the Transportation Department on the Transportation Master Plan; a portion of which is the light rail element. So that's where we are with that issue.

COMMISSIONER SCHWARTZ: No disrespect intended, but it is our role to be planners and to be ahead of the curve and I find it very frustrating that when something is requested of this Board -- and it was requested and I believe it was concurred by the members of the Board at that time, that the next hearing in January – because there was a break— that we

were going to have the initiation on our agenda. So it's very frustrating to me. I think that, separate from what the Transportation Department is doing, there was a specific request from this Board and that request has not been honored. And so I'm frustrated that it hasn't been.

And I understand that everybody's busy and the Transportation Department's doing other things, but I have the feeling, and maybe I'm wrong, that there is another something else going on, they'd rather not see it on our agenda. That's fine, but we initiated an action. We initiated for – we asked for an initiation so that we could initiate an action to add the light rail element to our Master Plan and we and the citizens of our community deserve the right for that initiation to move forward. That's why we're appointed here, to do those sorts of things.

So I would expect that on our next hearing we will have an initiation for an update of the Transportation Master Plan for light rail. And we can at that point take a vote on whether we want to initiate that action. And if we do, we can put together a time line for that initiation to occur. But I'm not willing at this point to wait any longer for a decision about what's going to be done and when it's going to be done. We've had since early December to discuss this. It's in the charter of our City of Scottsdale Charter that this is something that the Planning Commission does. And I would expect that at the next hearing we will have on our agenda an initiation for that update.

MR. GRAY: Chairman Steinberg and Commissioner Schwartz, if I may, can you give me a little—because I assume—

CHAIRMAN STEINBERG: This predates you, Frank?

MR. GRAY: No, No, he's correct; I was here. So I heard the conversation. Or if I didn't hear the conversation, I heard it second hand. My question is this: what specifically are you looking for from the staff? Are you looking for an analysis of transportation initiatives, or are you looking for an item to be agendized so that we can have an open discussion about that item?

COMMISSIONER SCHWARTZ: An item to be agendized so that we may start the initiation process. We'll approve an initiation for a process that will occur, that we'll agree upon what is going to occur and in the timeline that it is going to occur, so that we may update our Master Plan in an expeditious manner. Not waiting twelve months to update our Transportation Plan, but a ninety-day process; Ninety, 120 days, whatever that time line may be. But it's not something that's going to take us years for us to discuss, to learn about and debate. We've talked about it for years. We see what's going on in all the other cities. You have twenty million dollars' worth of money we're spending for improvements to Scottsdale Road and McDowell Road, and frankly it's a waste of money because we don't have a redevelopment plan for Scottsdale Road, we don't have a transportation plan that incorporates if we're going to have light rail or not, and I don't feel comfortable telling our taxpayers we're going to spend that money and come back later and tear it up and do it all over again.

MR. GRAY: So let me, again, because I want to get it right for you, is that I will assume that I will have the Transportation Director here and the person who is in charge of transit planning for the City here for your discussion and we hold it as a study session item?

COMMISSIONER SCHWARTZ: No. I'm looking as an action item, with an initiation with a time line for an update to occur.

MR. GRAY: Okay. We'll put it on the regular agenda and I will ask Mary to be here with her proper staff so that we can have that discussion, since none of us on this particular staff are experts on mass transit planning.

COMMISSIONER SCHWARTZ: Sure, and if they need to have some discussions with me -- or if anyone else on the Commission would like to sit down at a meeting with them to discuss -- to make sure they are prepared for that meeting, then that would be fine.

MR. GRAY: So if it's the direction of the entire Commission, we'll do that, we'll put it on.

CHAIRMAN STEINBERG: Commissioner Heitel has a comment.

COMMISSIONER HEITEL: Yeah, just , I know this has been an interest item for Commissioner Schwartz for a long time and maybe there's a little bit of miscommunication here, but I think it would be—whatever support I can lend to him in getting this discussion forward, its important for him and probably important to hear that conversation publicly. So, if I understand him, if there's an initiation then it does allow the process to publicly discuss moving forward. So whatever I can lend in that regard.

CHAIRMAN STEINBERG: Is that to the will of the Commission?

COMMISSIONER HESS: I'd personally like to add my support to that. I'm anxious to see that as well

CHAIRMAN STEINBERG: Well, I thank Commissioner Schwartz. I think that's very valid. So we'll get this on immediately and act to it.

I meant to tell everybody that there are speaker cards if you want to speak about any of the issues. Good looking gentleman over there holding the cards has plenty.

We have a little housekeeping; we have moved item number 8, 21-ZN-2005, Taliesin West. We've moved that to the expedited agenda, but if anyone is here to speak on that. I have a few cards already. We're going to hear public commentary on that as well as on one of the continuance cases which is on item number 2, 20-AB-2005, we have one speaker there. So I would think that, Donna correct me if I'm wrong, but we should have before we, of course, vote we'll have some of the public commentary occur.

So we could have Ms. Wendy Riddell from Berry and Damore speak on item number 2, item number 2 is part of the continuances. And you've got three minutes.

CONTINUANCES

2. 20-AB-2005 Colaric Abandonment

Request by owner to abandon the right-of-way for the entire alley behind 6446-6532 E. Calle Del Media.

WENDY RIDDELL: Thank you Chairman Steinberg, members of the Commission. Wendy Riddell with the Law Firm of Berry and Damore. It's my pleasure to be here this evening on behalf of Jonathan and Polly Levine. Just by way of explanation, Jonathan and Polly are constructing a home along Exeter, immediately adjacent to the alley. And indeed as recently as last November, the City issued building permits for them to construct a garage that receives access directly off of that alley. So as you might imagine they are extremely concerned to find out that there has been a proposal by one of the neighbors to abandon that alley.

I should mention they actually found that out from the City. That neighbor, the Applicant, has not reached out to certainly my client, and as I understand it, the rest of the neighbors along Exidor. There has been no attempt whatsoever to reach out to us; never been approached. And as such we've left with no choice but to forcibly oppose this abandonment.

We understand that staff is requesting this continuance, brief continuance we hope, to have a neighborhood meeting to see if there might be some resolution. We appreciate that staff is doing that. We just simply, respectfully request that the continuance be kept just for two weeks; that this issue isn't allowed to dangle out there when they are certainly under construction on their home. I have my own particular reasons for requesting two weeks, as your hearing, in four weeks I will be out of town on Spring Break; so we hope that that can be accomplished within two.

I'd be happy to answer any questions.

CHAIRMAN STEINBERG: Before we do that, could we get this on the 8th is that a possibility? On March 8th?

MS. GALAV: Yes.

CHAIRMAN STEINBERG: Okay.

Any questions? Thank you so much.

We have another speaker on item 2, Michael Dolan. State your name and address for the record please.

MICHAEL DOLAN: Michael Dolan, 6502 East Calle Del Media. Chairman Steinberg, Planning Commissioners, I would like to speak on issue number 2 here. We had not planned to speak tonight. However, the continuance request was granted by staff therefore we hoped the issue would be off the agenda. But since there has been a request to do this in two weeks, we certainly understand the urgency of the matter. However there are technical issues that are extremely complex.

Our neighborhood put in a request for this alley abandonment and raised the issue last summer in August. It has only now come to the attention and the urgency that we see. So our community has a tremendous amount at stake here and we have a tremendous amount of factual information that we are accumulating here and we would like to have sufficient time to have that information prepared. We may be able to get it in two weeks; however it may take slightly longer. I understand vacation schedules and other issues, but there's a lot more at stake than a vacation here.

CHAIRMAN STEINBERG: We have a question for you. Commissioner Schwartz.

COMMISSIONER SCHWARTZ: What additional technical information do you need? Because tonight you should have been prepared to make a presentation anyway, so if you were prepared for tonight you should be prepared in two weeks from now. We can't let this thing go on indefinitely.

MICHAEL DOLAN: We are not asking for an indefinite extension. We have technical information. Since it's not on the agenda, we're not really comfortable discussing that. But we are here to urge that the City take a very careful look at this; there's a lot more at stake than the particular occupant's issue.

COMMISSIONER SCHWARTZ: I guess I still don't understand that if you're agendized for tonight and you came prepared to make a presentation, finding that you're going to be continued, then how will you suffer to have it agendized in two weeks?

MICHAEL DOLAN: Councilman Steinberg, I'm sorry, Commissioner Steinberg, we have as a community a tremendous amount of information that we have accumulated and we are going to be represented by legal counsel. And our legal counsel could not be here tonight and that is the issue for us. So as soon as we can get our legal counsel here, we will present all the technical issues.

COMMISSIONER SCHWARTZ: Thank you.

CHAIRMAN STEINBERG: Okay. We've got one more speaker. Mr. Colton, please.

JOHN COLTON: Been here since '67, been a general contractor. And the reason we continued this was very simple; the Staff needed more technical information than we had supplied as far as dedication of the parcels back to the original donors and there's a lot involved in this. And I just can't believe—that's why we got it continued was because there's several things that has come up that we have to supply to staff and also to present our case, and we are not prepared in two weeks to do this. And that's just a pressure play on us so they can try to force this through. We have a lot of information that's pertinent and we'll reveal at the right time with our counsel.

So I think that time is not the essence on this, it's to do it properly and fairly for all concerned. It's a simple situation. It's not anything other than that. So I think this was kind of an insult to our continuance to try to get a two week hearing on it. If it weren't more involved, we would have had the hearing tonight. But some things have come up that are very important to the City and to our neighbors and on this situation. We'll have a case when we're ready. As far as the time, that's to be stated and we're the ones that will state the time and it will be in a reasonable amount of time.

CHAIRMAN STEINBERG: Thank you Mr. Colton. We are ready for a motion.

3. 19-AB-2005 Smallwood Abandonment

Request by owner to abandon the right-of way for 122nd Street and the easterly portion of the right-of-way for Pinnacle Vista Drive including the cul-de-sac and temporary turnaround.

4. 1-TA-2006 Conditional Use Permit Text Amendment for
Private and Charter Schools

Request by City of Scottsdale, Applicant, for a Text Amendment to the City of Scottsdale Zoning Ordinance (Ordinance 455), to amend Article III. Definitions.; Article V. District Regulations; Section 5.012. Use Regulations.;B. Uses subject to conditional use permit.;8. Private and Charter schools. The purpose of this text amendment is to create a minimum spacing distance between private/charter schools on large-lot residential properties.

5. 2-TA-2006 ESL Text Amendment

Request by City of Scottsdale, applicant, for a Text Amendment to the City of Scottsdale Zoning Ordinance (Ordinance 455), to amend Article VI. Supplementary District., Section.6.1083. Amended Development Standards and Section. 6.1090. ESL Submittal Requirements. The purpose of this text amendment is to amend the exemption process related to the 15 feet setback for walls on individual residential lots.

COMMISSIONER SCHWARTZ: I would like to make a motion.

I'D LIKE TO MOVE FOR A CONTINUANCE OF CASE 20-AB-2005 TO THE MARCH 8 HEARING; I'D LIKE TO MOVE CASE 19-AB-2005 TO THE MARCH 8, 2006 MEETING; CASE 1-TA-2006 TO THE MARCH 8, 2006 HEARING; CASE 2-TA-2006 TO THE MARCH 8 HEARING.

CHAIRMAN STEINBERG: Thank you, Commissioner Schwartz. We need a second.

COMMISSIONER HESS:

SECOND.

CHAIRMAN STEINBERG: Okay. Commissioner Hess seconds. All in favor.

COMMISSIONER O'NEILL: Can I have a comment?

CHAIRMAN STEINBERG: You sure can.

COMMISSIONER O'NEILL: I'm not sure who in staff this is appropriate for, but when was either the pre-ap or the initial case, the application submitted for 20-AB-2005? Approximately?

MS. GALAV: I really can't answer that question without looking at the file, and I don't believe we have the file with us this evening. It was in 2005 obviously, but I'm not sure when. It was August 2005. Thank you.

CHAIRMAN STEINBERG: That's plenty of time.

COMMISSIONER O'NEILL: The only reason I asked is because of what was just echoed behind me. I just wanted to – I'm the newest member here – I just wanted to make sure this wasn't something that didn't have the appropriate amount of time. But I feel

comfortable that if August 2005, if it's been being worked on since then that's definitely adequate time for any technical information to be brought forward.

CHAIRMAN STEINBERG: Okay. Good. We have a motion for continuance. We have a second by Commissioner Hess. All in favor. Any opposed? That passes unanimously.

THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0).

EXPEDITED AGENDA

CHAIRMAN STEINBERG: Okay. We move to our expedited agenda and as I said Taliesin has been placed on the expedited agenda, but we have two cards. I'd like to give the floor first to Edward Wimmer, please.

EDWARD WIMMER: Mr. Chair, I'd like to waive my speaking this evening.

CHAIRMAN STEINBERG: Okay. Then let's proceed to Nancy Dallet.

NANCY DALLEY: I'll waive my speaking this evening.

CHAIRMAN STEINBERG: Okay, great. Is there anyone else here to speak on any of the two expedited agenda items? If not, can I get a motion, please?

COMMISSIONER SCHWARTZ: Yes.

CHAIRMAN STEINBERG: One comment.

VICE-CHAIRMAN HEITEL: Yeah. I just want to – one quick comment to the Historic Preservation Committee. Obviously I support this and you know this overlay. But I was glad to see in doing the research on the history of the propagation of this overlay that originally it started out as an overlay on an entire four-hundred acre parcel and that all the parties sort of came to their senses and brought it down to a realistic buildings only and we will be hearing – further down the road we'll be hearing perhaps zoning overlay or a text issue to protect the remaining portion of that property. Kind of goes to the issues we were talking about in our study session, where preservation may be achieved without draconian measures. And I'm very glad to see this combination of two measures actually being utilized in our next meeting. So congratulations to all of you on that.

CHAIRMAN STEINBERG: Thank you, Commissioner. Okay, we're ready to move on, then.

6. 28-UP-2005 East End Electrical Substation

Request by owner for a conditional use permit for a public utility service yard (electrical substation) on a 3.64+/- acre parcel located at 17490 N. 91st Street with Industrial Park, Planned Community District (I-1 PCD) zoning.

8. 21-ZN-2005/6-HP-2005 Taliesin West HP Overlay Zoning

Request by City of Scottsdale/Historic Preservation Commission, applicant, Frank Lloyd Wright Foundation, Taliesin West, owner to rezone from Single Family Residential District,

Environmentally sensitive Lands, Historic Property (R1-35 ESL HP) on approximately 10.6 acres of Taliesin West located 12621 N. Frank Lloyd Wright Blvd. by adding the Historic Property overlay to the core buildings and to place Taliesin West on the Scottsdale Historic Register.

COMMISSIONER SCHWARTZ: I'll make a motion.

I'LL MAKE A MOTION THAT WE APPROVE CASE 20-UP-2005 BECAUSE IT MEETS THE SPECIAL USE PERMIT CONDITIONS AND CASE 21-ZN-2005/6-HP-2005.

CHAIRMAN STEINBERG: Thank you, Commissioner.

COMMISSIONER HEITEL:

SECOND.

CHAIRMAN STEINBERG: Seconded by Commissioner Heitel. All in favor. Any opposed. That passes also. Thank you.

THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0).

REGULAR AGENDA

CHAIRMAN STEINBERG: Okay. We're ready for our last case, which is 19-UP-2005, and Ms. Kira Wauwie will be presenting for the City.

7. 19-UP-2005 Performance Enhancement Professionals Health Studio

Request by owner for a conditional use permit for a health studio in an existing 3199+/- square foot suite located at 9319 N. 94th Way #200 with Industrial Park, Planned Community District.

MS. WAUWIE: Thank you. Chairman Steinberg and Members of the Commission, this case is a request for a conditional use permit approval for a health studio use.

The site is located on the east side of 94th Way, just north of Doubletree Ranch Road and is outlined in a yellow highlight on this aerial map. As you can see on this map, this site is surrounded by other industrial and warehousing buildings. And I'll show you a close-up view of the particular site. The property is improved with parking to the west of the main building. The parking is shown with the parking canopies. The suite is the second suite from the north side of the building. To the east of the building is a loading zone for all the various suites that are in the major office warehouse building.

This map shows the zoning of the site is I-1-PCD and the PCD portion is indicative of its past zoning as part of the McCormick Ranch community. This particular area of that community is I-1 for industrial uses and that zoning district is typical of uses that are kind of a garden variety of an industrial nature and office uses. These have generally little impact on surrounding areas, unlike comparison to a general or a heavy industry type of use.

Typical uses in the I-1 district do include warehousing and offices and limited manufacturing, including research and development characteristics. In this area there are existing uses that include those and in comparison to the health studio, I'd like to point out that there are a couple of sites in the vicinity that are gymnasium or gymnastics facilities. A gymnastic facility is a permitted use in the I-1 district and does not require a conditional use permit.

This is the suite plan for the particular building. The property that we are dealing with in this conditional use permit is Suite number 200. The adjacent uses to – lets see this would be to the north Suite 100, is an office suite. This is the petitioners applicant resides in this office suite and it is used for office purposes. As part of my site investigation for this case, I visited both Suite number 100 as well as Suite number 200 and Suite number 300. and Suite 100 was primarily constructed with offices with the exception of the rear back adjacent to Suite 200 is a small storage, comparable to a garage in size. And then, Suite 200, you have a floor plan in your packet. Primarily the upper or the front portion of the suite is an office type of improvement, whereas the back portion of Suite 200 is primarily where the weight and health studio functions occur. Then Suite 300 is primarily offices throughout. There is a small storage space approximately right here in that area.

This building itself is constructed as an office warehouse building. The typical construction of an office warehouse building is that the smaller front portions are intended for office space and those are usually fully insulated. Whereas the warehouse portion which is the back portion of the space has a more limited insulation floor to ceiling with a lack of a drop ceiling, its just open all the way up and the pipes and those kinds of things are exposed to view.

This use does require use permit criteria. The use is indoors and there are uses of similar impacts in the area. The traffic generated by this use is very similar to other types of uses allowed in the center, and the use is generally compatible with the zoning allowed uses and the surrounding area. The Applicant did conduct community out reach and neighborhood involvement and there were some noise concerns brought up. Therefore in order to make the use more compatible, Staff has included a stipulation to abate, or minimize noise from Suite 200 onto the adjacent suites. And we do recommend approval subject to that condition. If you have any questions I'd take them now.

CHAIRMAN STEINBERG: Thank you Kira. Commissioner Schwartz.

COMMISSIONER SCHWARTZ: The space is built out currently?

MS. WAUWIE: Yes. This is built out.

COMMISSIONER SCHWARTZ: So there is a building permit, because the floor plan we got was not a scaled drawing, it was just kind of a hand sketch, so it made me think that maybe they weren't permanent or somebody didn't have any drawings. But those are in public records, aren't they?

MS. WAUWIE: I'm sorry?

COMMISSIONER SCHWARTZ: Those are in public records? I mean you couldn't even tell where the door was at. There's nothing drawn on this floor plan that indicates where

the main entrance is—well, it says lobby—so assuming that everything comes in off the lobby, correct? There's no access in the back, or is there access in the back?

CHAIRMAN STEINBERG: There look to be overhead doors in the back.

MS. WAUWIE: There are overhead doors in the back.

CHAIRMAN STEINBERG: And I don't think it has—when you say a permit. I don't believe it's been filed, because they've been in operation without a conditional use permit. But I'm not sure they filed anything other than a business license permit.

MS. WAUWIE: Yes. They were granted a business license without the benefit of a conditional use permit.

COMMISSIONER SCHWARTZ: So they didn't have to do any build out in their space, then, under their current condition?

MS. WAUWIE: I'm sorry Mr. Schwartz; I just can't understand what you're saying.

COMMISSIONER SCHWARTZ: They didn't have to do any renovations to the space. I guess I'm just curious to the condition of the drawing that we got. I guess that Mr. Heitel would say is kind of draconian. I just thought that something maybe wasn't right that we didn't get in our packet a –

MS. WAUWIE: I understand what you're saying now. No. this was the best that the Applicant could provide for us.

CHAIRMAN STEINBERG: This is the former Antigua Headquarters, so that—and I know that really well – but the restroom, locker room, I would assume is new. It's existing, pretty much?

MS. WAUWIE: That might be something that the Applicant can address in their presentation.

CHAIRMAN STEINBERG: We'll talk about it. You bet. Any other questions?

COMMISSIONER BARNETT: What's the construction type of the party walls between the suites? Are those masonry walls or are those –

MS. WAUWIE: As I understand they are not masonry walls, rather they're stick built. But perhaps the Applicant would know better too.

CHAIRMAN STEINBERG: Commissioner Heitel.

VICE-CHAIRMAN HEITEL: Obviously there's a lot of these kinds of uses and similar industrial kinds of buildings in these strip centers and whatever. Has the City experienced this problem with other neighbors in other uses throughout the City? I mean is code enforcement hearing about this in some way or are other health facilities in other locations just choosing to play nicer music or whatever?

MS. WAUWIE: Well, I think that if you look back on to the number of conditional use permit cases we've processed for health studios; there is some indication that there is a need for perhaps better education that there is a use permit requirement. We have had to have some folks have to come in retroactively for a health studio conditional use permit.

VICE-CHAIRMAN HEITEL: So there may be a lot of these out there that don't have conditional use permits that we may start seeing? Is that what you're saying?

MS. WAUWIE: There could be.

VICE-CHAIRMAN HEITEL: And then how did you come up on your stipulation recommendation for approval; the stipulation to improve the space so that it does not generate or pass sound over this 45 decibel? Is that going to alleviate and give quiet enjoyment to the rest of the neighbors?

MS. WAUWIE: That particular noise level is characteristic of the midpoint between a quiet office and a larger office, not necessarily a noisy, but a larger office facility. The data that we found was on the Internet of standard noise level ratings, there's some range of office that goes below 40, it appears that the mid range is 45, and that's how we came up with the 45.

VICE-CHAIRMAN HEITEL: Just kind of ballparked that? Okay. I think that's all I have for now. Thanks.

CHAIRMAN STEINBERG: Commissioner Schwartz.

COMMISSIONER SCHWARTZ: Ms. Bronski, how do we enforce that? Because it would sound to me as though you would have to find the person at the particular time that they were being too loud. You'd also have to have somebody out there kind of spying on them to see if they were being too loud during certain periods of time. So how do you really enforce a stipulation like that upon somebody; because it's really going to be hit and miss to try to find a violation?

MS. BRONSKI: Mr. Chairman, Commissioner Schwartz, frankly noise complaints are difficult. Normally the police or the code enforcement officer need to observe it and measure the noise. One – I don't know if code enforcement has the equipment these days to do that kind of measurement.—do we? Okay. – Apparently it's available for code enforcement to have that. It's not unlike barking dogs; you need to be able to observe it.

COMMISSIONER SCHWARTZ: All right. Thank you.

CHARMAN STEINBERG: Commissioner Barnett and then Commissioner Heitel.

COMMISSIONER BARNETT: I guess I just have a general question for either Mr. Gray or Lusia. This is an industrial zone, and all of our industrial zoning for the last couple of years, this is probably the fifteenth conditional use permit that's come through for some type of health studio. Granted it's part of industrial zoning, but isn't there eventually some type of limit to how many of these things are going to be there that we're going to approve? When, my gut is without looking at the data, that this is a fairly low tax base tax enhancement for the City type of organization, when we've got specific areas that are

designated industrial that really are not hardly being used for industrial for any of the stuff that we've been seeing.

MR. GRAY: Chairman Steinberg and Commissioner Barnett, this is an ongoing problem with industrial use space which is usually large, free span space that's fairly inexpensive in relative terms in the market. And uses like to go into those spaces that use large volumes of space; health clubs being one, furniture places another. So there are retail kinds of uses that normally you would find in a retail or office zone that tend to migrate toward the industrial park because of the expense or the cost of the space. And that is a problem. A constant problem that we need to deal with is trying to keep the industrial space for industrial uses and not allow constant migration of retail uses. As you're aware that's one of the major issues out in the Airpark area we've had over the years is maintaining it as an employment center versus a retail commercial center.

CHAIRMAN STEINBERG: Commissioner Heitel.

COMMISSIONER BARNETT: If I could just follow up. We don't really have a solution for figuring out when enough is enough. I mean historically we've just kind of let the market dictate that this happens to be the use that happens to be wanting to pay that particular fee. Now, we're essentially adjudicating between an office complex and a health studio on their noise, which is a conditional use permit criteria. But, as far as an industrial, I mean if you've got two industrial people sitting side by side like this doing heavy equipment machinery or whatever you're going to do, light equipment machinery. Whatever you're going to do in an industrial area. We're not going to be sitting here talking about what the decibel level of the next-door neighbor is because it's an industrial use instead of an office use or this.

So I guess my question is—my gut is that we're going to continue to see these, because I guess as a City we don't really have any strategy for stopping it or promoting the actual true industrial uses in these areas.

MR. GRAY: Chairman Steinberg and Commissioner Barnett, you're absolutely correct. The issue is one in which we've required a conditional use permit because there is the potential for loud noise. But there could be industrial uses that go in there that also create loud noises that would disturb the offices next door that wouldn't require a conditional use permit. So, in this case we do get to review it. In some cases we probably would not get a chance to review it. And it might even go back to the point of actual building codes and trying to make space separation more isolated from a sound standpoint. A lot of these industrial buildings that are subdivided into small spaces have less expensive rates because they don't do the insulation and other things that other spaces would. If you get like kinds of warehousing and distribution uses next to each other, they usually don't bother each other. But in this case when you get a use that clearly is not in the industrial realm, next to office and industrial space there is the potential for disturbance and, therefore the conditional use permit.

CHAIRMAN STEINBERG: Commissioner Heitel.

VICE-CHAIRMAN HEITEL: Kind of a follow-up here. Maybe if you can follow and maybe Ms. Bronski if you could help me here; I guess the crux of my question is, is this a conditional use issue? Are we being asked to mediate a dispute between tenants that arguably is addressed in private agreements like leases and CC&R's and those sorts of

things and is our job here to defer on the noise and contamination outside of this building or are we being asked to involve ourselves in disputes between tenants when maybe their lease agreements—lease agreements usually are contractual agreements with property owners that provide certain representations of quiet enjoyment. CC&R's – and this looks like a project that looks like its being sold out, some of it leased, some of it condo'd; you know, clearly there are CC&R's there. Is that even an issue for us, or is this an issue between tenant, landlord, and association?

MS. BRONSKI: Mr. Chairman and Commissioner Heitel, you raise a really good point and I think that it's certainly something that you can consider. You're still bound under the use permit procedures to look at impacts in the neighborhood and in the surrounding based on the general criteria and the use permit. But I think that you can temper that basically under the considerations that you just raised in that it is an industrial zone and it is not a residential zone, so the level of noise is anticipated to be higher obviously with industrial uses. So while you might not consider this an appropriate use in a residential district because of the sound and the potential noise, you might consider in an industrial area that a higher level of noise fits into the ambient noise of the area when you're making your determination about, is it unreasonable, is there damage from vibration?

VICE-CHAIRMAN HEITEL: Yeah, I mean in a way an industrial area—an industrial zone is designed to accommodate industrial uses and – anyhow, okay, thanks.

And, oh—my other question is, are we aware if the tenant and or adjacent property owners and the property owner of the building have tried to remedy these through remedies they have in their own private agreements or are they just coming to us because they can't talk to each other?

MS. WAUWIE: The information that I have, Mr. Heitel and Chairman Steinberg, is that the applicant and the adjacent property owner in Suite number 300 have had discussions. There was a contractor's estimate regarding the cost of remediation that included a drop ceiling and various other improvements. As far as I know that is the only end as far as they got was that estimate.

MR. GRAY: Commissioner, through the Chair, Commissioner Heitel, this is not a dispute resolution this an issue of the requirement of a conditional use permit for this use in the area. And so even though there is a dispute involved in this, you're right, that needs to be worked out between the parties. Your job and our job is to look at it. Is it an appropriate use for the area and if it is an appropriate use, what are the conditions that would be necessary to make it compatible with the rest of the area? Your job is one of the zoning ordinance and nothing more.

CHAIRMAN STEINBERG: So quiet enjoyment does not play a part in what we resolve tonight?

MR. GRAY: That's correct.

CHAIRMAN STEINBERG: Okay. Commissioner Hess had a comment.

COMMISSIONER HESS: That was my question, because it would seem to me that this being an industrial area, if this were not a gymnasium and didn't require a conditional use permit and it were a machine shop or a carpenter or cabinetry shop there'd obviously be

substantial noise. And because of the existing zoning, there wouldn't be a requirement to mitigate that noise in some fashion. So I don't see, I mean I understand, but I don't see that it's our job to mitigate the problem. If we grant a conditional use permit to the applicant, I don't understand why we would need to have a stipulation or an amended stipulation requiring them to mitigate the noise just because their noise happens to be music, and granted that is optional, as opposed to noise that would be incident to the normal course of their business.

MR. GRAY: Commissioner Hess, through the Chair, that's correct. I mean, in a conditional use permit you get to attach the conditions that you feel would make the use compatible or blend with the area the best; that's your call. You have that review on this particular use because these uses can have impacts, both traffic impacts, noise impacts, other things, and you need to craft a set of conditions that you think are appropriate for the use to go into the area or deny the use, one of the two.

CHAIRMAN STEINBERG: So it's really incumbent on Applicants who are office users and going into industrial areas, it's incumbent upon them to understand that there could be noise emanating from industrial operations surrounding them. That's just a fact of life

MR. GRAY: Correct.

CHAIRMAN STEINBERG: Okay. Well, we have a—

COMMISSIONER SCHWARTZ: One more comment if I could.

CHAIRMAN STEINBERG: One more comment.

COMMISSIONER SCHWARTZ: I think as we collectively look at this we have to be careful that we're not doing somewhat like the problem that we had with the housing, where we really pushed a segment or in this case dipped certain providers out of our marketplace because these are the only type of places they can afford to run their businesses. They can't go into strip centers and retail shops; it's far too expensive for them to operate. They can go into raw shell conditions like this and operate their businesses and if we don't allow these types of businesses to function in these particular situations then we're not going to find them in our community and I think it's important that we have that element of having these types of uses functioning in our community.

CHAIRMAN STEINBERG: And it's kind of an anomaly, the McCormick Ranch Industrial Park is a small park. It's surrounded by pretty affluent residential and some corporate class A&B headquarters; so it is an anomaly.

Did you have a comment?

COMMISSIONER HESS: I just don't see that it's incumbent upon us to impose, as this might or might not, conditions for the issuance of the use permit that would basically raise the price for such a tenant to a point where it makes it difficult for them to be in business or forces them to seek locations that might not even be conducive to their business. Or puts them in the same position, why not go to a strip center and pay outrageous rents.

CHAIRMAN STEINBERG: Thank you. Okay. Thank you very much, Kira.

We have some speakers wishing to present their case tonight. We have Jim Keeley. Jim you'll have three minutes, if you'll be followed by Lynne Lagarde. Please state your name and address, just for the record, Jim. Thank you.

MR. JIM KEELEY: Thank you. Jim Keeley, 7845 East Redfield Road. I'm the landlord; I actually purchased this unit after the tenant was operating for over a year. My business is working in the industrial leasing space and selling space in the Airpark and McCormick Ranch area for twenty years, so these types of uses have been around for a long, long time, and I would just concur with a lot of the comments you've all made about the difficulty of regulating noise in the I-1 zoning as the variety of uses that can go in there. So it would be a burden to me if this tenant had to vacate because of this issue. In fact this tenant and these types of uses do pay higher rent than your widget makers tend to pay. So their not paying the high retail rents, but it is still relatively high rent that they have to pay to find the space to accommodate them.

CHAIRMAN STEINBERG: We have a question for you. Commissioner Heitel.

VICE-CHAIRMAN HEITEL: Just a follow up on part of what I was discussing before. As the property owner, what are your obligations under your CC&R's to your adjacent neighbors?

MR. JIM KEELEY: There is a property owner's association that manages the CC&R's and the whole property. And we've met with them, we've talked to them, and we've talked to the tenant. And the tenant, to our knowledge, has tried to accommodate as best he can. And as the landlord, we did go out and seek out an estimate to find out if there was something that could solve this. The estimate that came back was ten times what we thought it might be and there's still no assurance that with the work done it would stop the noise.

VICE-CHAIRMAN HEITEL: My question was more, in those CC&R's that you have all agreed the rules under which you have all agreed to coexist, clearly they speak to noise, nuisance, disturbance, issues; what are they?

MR. JIM KEELEY: Specifically, I don't have them in front of me.

VICE-CHAIRMAN HEITEL: In general, most CC&R's prohibit disturbance.

MR. JIM KEELEY: In the same building there is a machine shop, there are other uses in the building that generate various levels of noise and the property owner association CC&R's are in conformance, as far as what I've been told by our property managers.

VICE-CHAIRMAN HEITEL: Well, without the CC&R's I guess we can't get into it further. Leave it to say that clearly your CC&R's deal with cohabitation issues between property owners within the CC&R's.

MR. JIM KEELEY: I'm pretty sure they do. The lease itself talks with quiet enjoyment, stuff like that.

VICE-CHAIRMAN HEITEL: The lease, in some restriction, you should have on another private restriction you would have with your tenant also.

MR. JIM KEELEY: It is difficult to mix a hundred percent office space with industrial space, it's just difficult.

CHAIRMAN STEINBERG: You bet. Thank you, Mr. Keeley.

MR. JIM KEELEY: Okay. Thank you.

CHAIRMAN STEINBERG: Lynne Lagarde, followed by Mary Curet.

LYNNE LAGARDE: Mr. Chairman, members of the Commission, for your record, Lynne Lagarde, 3101 North Central in Phoenix. I'm here tonight representing Bob Bove, whose Jiffy Lube offices are adjacent to the health studio.

First of all, I want to thank Kira for coming out and doing the noise test for us, with us. As you know, I am usually representing developers and asking you to approve something like this use permit. I don't take an opposition case lightly and I only do it when I believe there's a really egregious situation occurring. And based on my visit to the site with Kira and listening to the stereo music coming into Mr. Bove's offices, and you'll hear more about that, it seemed to me that the noise being generated was an egregious intrusion into this space. We're not asking you here tonight to enforce CC&R's or nuisance laws we're simply asking you to enforce your own zoning code.

This is a use that has impacts, as the staff has explained to you. And one of the things that you have to consider is whether those impacts are intrusive, and the burden is on the Applicant to prove that the impacts are not intrusive. And the Applicant has simply not met his burden in this case. As you have pointed out there probably wasn't any TI permit to do improvements. It's an unfinished ceiling, an unfinished walls and floor, there's nothing sound absorbing, and the stereo music is played at such a volume that when I stood in that conference room and Kira was there and in Mr. Bove's office you cannot conduct business. That's what your use permit criteria for uses like this protect people from, and the Applicant has really refused to do anything to help mitigate that impact. He failed to meet his burden of proof. And if you came out and tried to do business in Mr. Bove's office, you would hear that. Another property owner, another businessman from the area, Mr. Bates, wrote you a letter and said, "I've been in that suite and the music- the building shakes, the music is deafening." So we believe – we'd rather let Mr. Danny conduct his business, we don't think that's inappropriate, unless he doesn't control his noise.

So we think that that stipulation is very important, and it can be enforced by a simple test. It requires that within sixty days that the office be insulated and you come out and test and see if it meets the decibel level. That is something very, very measurable. And we're very concerned that the City do that and take that step and we want a commitment on the record that noise mitigation will be taken; steps will be taken by the Applicant. Otherwise he simply does not meet the burden of proof under your Ordinance that you have to uphold and enforce, and that's our plea to you. If you think this is an appropriate use, by all means approve it, but with that stipulation that protects other users. Mr. Bove tells me he doesn't hear the machine shop; he doesn't hear any other users. This is right next to—and he's insulated his walls, by the way.

So that's our request and some of the personnel from his office and Mr. Bove are here to tell you because they experience it on a daily basis. I was just there for testing purposes.

CHAIRMAN STEINBERG: Thank you Ms. Lagarde . I think we have a few questions for you, Commissioner Schwartz.

COMMISSIONER SCHWARTZ: Lynne, what prompted this process was the application for the use permit, correct?

LYNNE LAGARDE : Yes. And what triggered that, when Mr. Bove asked about the fact that there was no noise control there, he found out that there was no use permit.

COMMISSIONER SCHWARTZ: Okay. So let's say there was a machine shop there and his saws were running twelve hours a day, and the noise of the saws, I'm sure, would be at a far higher frequency than his music, what would be your client's course of action? Because he doesn't need a use permit to run a machine shop.

LYNNE LAGARDE : I think my client would go, as he did with this occupant, and ask for some cooperation and hopefully receive it. Usually people treat one another that they would use their property the way they would want their neighbor to use their property and they treat themselves like neighbors. That's what Mr. Bove did. And in this case, because you have a use permit criteria, we have the opportunity to come to you and say you need to do something. If you will look, and I think these are still up here, these are very small narrow spaces. This is not a space that would allow the operation of a normal health studio, which does have to control its noise for other tenants and which does have to do the things that it takes to make themselves a good neighbor. These suites are very close to one another, very small, and they haven't been built out in a way that meets your criteria.

COMMISSIONER SCHWARTZ: Yeah, but I certainly believe that if he was running a machine shop here that you'd probably be in a civil suit regarding noise over the CC&R's, and not coming to us asking for—

LYNNE LAGARDE : And that could be something that happens if the City doesn't enforce its Ordinance. But we have the opportunity to have the City apply its Ordinance as you apply it to other users in the City and to anyone who comes before you with a use permit; and I think of a lot of ones for entertainment uses, not in industrial districts but in commercial districts surrounded by other commercial uses. And this City and this Commission has required noise abatement.

COMMISSIONER SCHWARTZ: Sure. But—

LYNNE LAGARDE : Under your use permit criteria.

COMMISSIONER SCHWARTZ: Sure. But from my perspective, I may not enjoy the type of music that our Applicant likes to play, but I can tell you that I'd much rather listen to a high frequency music than to hear machines running next to me. And that's really the comparison, at least in my mind, that I'm going to make. If you're talking about quiet enjoyment, if that's the criteria, where they should be able to have that music here I think your going to draw that comparison. I'm going to at least draw the comparison that if there's a machine shop there, that's going to offer far more noise than what the music is and it's going to be very hard for me to substantiate to require this sort of stipulation on here and really leave that up to a civil matter for if his neighbor feels he is being too loud to take that up in another manner, because I don't think that's the purview of the Board.

LYNNE LAGARDE : I would just remind you that in your code, the Council and the Commission are to consider the following factors: damage or nuisance arising from noise, smoke, odor, dust, vibration, or illumination. Any citizen in the City of Scottsdale has the right to have the Zoning Ordinance enforced, and that's all we're asking you to do. We think it's a fair requirement and it's a requirement that enables this Applicant to meet Ordinance requirements.

CHAIRMAN STEINBERG: Commissioner Heitel.

VICE-CHAIRMAN HEITEL: Ms. Lagarde , Commissioner Schwartz raises a very interesting, sort of intellectual question here, would not then the standard for noise in an industrial park be the standard of permitted uses in that industrial park; such as machine shops, I'm sure machine shops have higher decibel levels than 45, manufacturing, all those sort of things. So one could accept your argument that it might be appropriate for us to impose decibel standards on our use permit, but why would we impose something more stringent than what is already allowed on the zoning code? Because –

LYNNE LAGARDE : Yeah, I –

VICE-CHAIRMAN HEITEL: Just to—

LYNNE LAGARDE : Yeah, I understand that. To my knowledge, there are no noise standards in your Code relative to the industrial district. I have not seen that. If you think about the uses in the industrial district I would venture to say that it's well over seventy five percent office. We don't have a lot of heavy industrial uses in Scottsdale, so I don't think there's been a noise issue from heavy industrial uses that required the City to establish a standard. Not to my knowledge.

VICE-CHAIRMAN HEITEL: And I appreciate that. But the framers of the Zoning Code that we are forced to live by in the City provided in the I-1 District that manufacturing, processing, research development, municipal airport, aeronautical activities, you know fairly intense noise issues would be allowable in that district. Whether the marketplace has them currently occupying those sites probably is irrelevant to the Zoning Code. But to get to Commissioner Schwartz's question, why would we impose something more stringent than what is already permitted?

LYNNE LAGARDE : I think because you have an experience in this particular case of an applicant who is applying for a conditional use permit who has the burden of proof of meeting that he is not imposing any damage from noise, and yet you have evidence from your own staff member, Kira Wauwie in her staff report, who acknowledged this problem. You will hear further testimony, you have factual testimony that this damage is arising from the use of this use permit and the Ordinance restricts that. The framers of the ordinance put those restrictions in there for a reason.

VICE-CHAIRMAN HEITEL: But did they? You know, I mean, you above anybody know that – I mean, I have witnessed the voodoo science of noise testing in the past and find it quite an interesting, nonscientific approach to things. That's not my question. My que— and maybe I'm done. But my question and statement, I guess is, that if the industrial district provides for manufacturing processing it would be irresponsible in my mind for this Commission to impose a stricter burden on any tenant moving in just to selectively—even

though I might agree with – you know, it's probably intolerable to maybe my taste in music. But if certain levels of noise are permitted in that district, why would we single out somebody, just to single them out.

LYNNE LAGARDE : I don't think it's a question of singling out, and I would give you the same example, why do you single out some uses in a commercial district, like bars and restaurants, that their noise has to be contained, when they can have a lot of uses around them that don't have those. For example, I could own a restaurant--it's no different than this situation -- in which I don't have live entertainment and I don't have a use permit and I can play my music as loud as I want. But if I'm a live entertainment provider or a bar that has a DJ, I have to come to you and make sure I don't have noise. It's no different than the machine shop analogy and the analogy here to the health studio.

The reason why you can do it, the reason why it's appropriate to do it is that under the conditional use permit process, which is in the Ordinance for this particular use, you have an obligation to make sure that the Applicant has met his burden of proof that he is not generating noise of a damaging kind. It's the same analogy with the two different kinds of restaurants. And I think any citizen who comes to you and says, "I am experiencing intolerable intrusion," and you have the ability to remedy that in a way that shouldn't put this gentleman out of business, I don't know why you wouldn't.

VICE-CHAIRMAN HEITEL: But don't we then de facto establish a level of noise for every other health studio in the City? I mean, this issue is here because it's the cart before the horse, they went in, started their operation, didn't come in and we've had tens of dozens of use permits for health studios that go through here on expedited who haven't built out their facilities and then go in and build them out. We don't impose any noise restrictions on any one of those, and the fact that this party has been in there sort of operating without a use permit, now we are arguing about what is an appropriate noise standard in an industrial district. Would not somebody else in another shopping center in another industrial district say, if we followed your logic, say, "Well, you restricted this tenant to 45 decibels; you should do that as a condition of every other use permit in the City." I mean—

LYNNE LAGARDE : I know of no of no stipulations in a specific use permit case that set precedent. The conditions that you put for one bar or one restaurant with live entertainment are often very different from others, given the context it's really tailored to the specific case; it does not set that kind of precedent. The fact that you exercise some control under your Ordinance, I think is what counts. This doesn't mean that everybody has to meet that criteria. Do you have a different number that you're interested in? I mean, if you think this is a too restrictive number. I don't understand.

VICE-CHAIRMAN HEITEL: Well, I think if we had information, maybe its not available to us, that said the highest limits of manufacturing processing, aircraft, municipal airports, and aeronautical activities was 85 decibels. Yeah, that might be helpful for us.

LYNNE LAGARDE : Well, I think the other thing you have to take into consideration, Mr. Heitel, is the proximity of the impacts. This is an uninsulated wall on the health studio side. My client has insulated. I think what the staff has given you is an appropriate level given the confines and given the specifics of this use permit case. And I think it's very appropriate and very warranted.

CHAIRMAN STEINBERG: Can I suggest something, and I know we have a few more questions, but I was remiss in not having the Applicant speak. And I assume you have representation, you want to make some sort of presentation.

Is there anything that we have of Ms. Lagarde or could we hold it until later.

COMMISSIONER BARNETT: Well, I guess while she's there I'd like to go ahead and ask her a question.

Ms. Lagarde, since you're actually citing the use permit criteria, let me go ahead and cite the paragraph previous to what you were talking about: "The granting of such conditional use permit will not materially be detrimental to the public health, safety, or welfare. In reaching this conclusion, the Planning Commission under the City Council's consideration shall include, but not limited to the following factors:". Okay, "consideration," if we're sitting here and we're considering the noise and we decide that noise in this particular instance is something that we're totally comfortable having noise in this area, we've considered it. I don't see where your interpretation is that we can only have the amount of noise that your particular client might want. "Consideration" to me doesn't say consideration to whatever your standard of a level is.

"Consideration" to me says I'm looking at this conditional use permit and it just happens to be in an area that I'm comfortable with more noise. Now, if this particular building was right next to a residential area and your client, then the standard of that consideration might be completely different. But you're telling me that just because it says "consideration," that our consideration has to be the consideration of the noise level that your client wants.

MS. LAGARDE: I think what you've made is a fair analysis. I don't think you have to make that determination. But what I'm saying your Ordinance says is the Applicant has the burden of proof of establishing whether or not any of these criteria are met or not met. And if they are not met, and in this instance I don't believe that they have made a showing that the noise damage doesn't occur, then I think that's something that you have to factor in and protect a business owner from.

COMMISSIONER BARNETT: Thanks.

CHAIRMAN STEINBERG: Okay. We'll hear from the Applicant right now and then we'll come back to public testimony. Thank you.

SETH FREEDMAN: How ya doing. My name is Seth Freedman, I reside at 9319 North 94th Way, I'm actually adjacent, I'm in Suite 100, right next to Suite 200. The only thing I'm going to address with you, and I'm not representing the tenant but I'm helping him out, is the building in terms of the permit, you had a question. I was the one that did the entire tenant improvement project, converting this building from Antigua into condo's. So as part of that, these two suites had items that were part of that building permit that were part of that, as well as fire issues that had to be addressed along with the whole building. The first four suites, 1, 2, and 3 or suites 100, 200, and 300 were existing suites as part of, they were always rented out or at some portion of that time they were rented out as individual suites so there was not a whole lot of tenant improvement that needed to be done. And the reason that were here and that Bob Bove had to insulate his suite is that it was never insulated when it was originally built. So currently right now, the wall between my suite

and Suite 200 is not insulated as well, because it was never done from the day that it was currently built. I guess it wasn't up to code at that time, but that wasn't for me to determine.

CHAIRMAN STEINBERG: Is there anyone here representing the Applicant, because I want to find out more about your operation and the noise levels that we're hearing about. Thank you.

IAN DANNY: Good evening, gentlemen.

CHAIRMAN STEINBERG: State your name and address just for the record, please.

IAN DANNY: My name is Ian Danny, I'm at 9319 North 94th Way, Suite 200. I run a – they're calling it a health studio; it's essentially a gym for strength conditioning training purposes. My business caters primarily to professional and elite amateur athletes; we conduct various weight lifting, clinometric, sometimes running type training at that facility. There's a stereo at the facility that gets played, its played at a level that's the clients choice, but music that's the choice of the clients as they come in; it varies throughout different times of the day.

I understand that there was a noise problem and I understand Bob Bove's concerns and I've made attempts to restrict the level of the volume on the stereo. Part of the problem is there was poor communication to begin with. The matter was brought to my attention originally by a person who I believe is the secretary of the landlord that basically sent an e-mail and said "We have a concern from the next-door neighbor. What can you do about the noise, yada, yada, yada." So in response to that, we made an attempt to reposition speakers, turn down the stereo and see what we could do about it.

I actually have an e-mail right here from Mary Curet, if I'm saying that right. I'm not sure who that is, and it says, "Hi Michelle, I just wanted to let you know that I spoke to Ian. He was very nice and listened to our concerns about the noise we hear in our office. He gave me his cell phone number if there are any problems, but I really do not think there is anything more I can ask of him. He advised me that adjustments were made to the location of the speakers and a rubber matting is on his floor. Other than that he is conducting business and the music level is by choice of his clients. Unfortunately, I think he is also a victim of this situation." I think that—subsequent to that, no other attempts were made to come and talk to me or say anything about the situation. And when we had the meeting, I was told by them that the reason was they were advised by their attorney to not bother talking with me and they were going to deal with it this way. Okay. So that's the other thing. Okay.

The next thing that I want to get to is basically –

CHAIRMAN STEINBERG: Could you speak a little louder.

IAN DANNY: Yes. I think the next thing that I want to address is—and before I get into that, I want to say that I don't have any problem with Bob Bove or his business or anything, but both of us are in an industrial space and neither one of us are conducting really an industrial business in the space and so things happen. But when I originally moved into the space, I applied for a business license through the City of Scottsdale, and was granted the business license and was granted one again the next year and the next

year and nothing was ever came up with me or brought to me or said anything to me about even requiring the use for the use permit until I got a violation for a noise ordinance that was stuck in my door by an inspector who didn't even inspect the place while I was in Florida. So then the whole thing, ball started rolling and we started looking into what we can do about this.

I guess my chief concern is that, you know, I think—but before I get to that, can we get this map back on here or.

CHAIRMAN STEINBERG: Sure, which exhibit do you want?

IAN DANNY: The way these are all set up is you have office in the front, you have warehouse in the back, okay? In the space right here what we have is office space that's built entirely out to the back in the warehouse space. So obviously there's an expectation of noise. It seems to me that the framers of the zoning ordinance had an expectation of noise in this I-1 zoning, okay. And part of what they expect is a greater amount of noise to be generated from the warehouse than the office. So when you make the decision to build out your office space throughout the entire warehouse, you have to understand that there's an increased expectation of noise, otherwise limit your space to that. Now, when we did that noise inspection when we went over there, it was loud and it was very noisy back there, but only after the stereo was turned up to a point where you couldn't even have a conversation in my existing suite. And secondly, and Kira can tell you about this because I pointed it out three times, the noise was not a problem in the office space, it was a problem in the warehouse space where offices were constructed. So from where I stand it seems that in some respects he is kind of going against what is really the crux of the zoning ordinance and then turning around and seeking protection from the same ordinance that he's going against. So to me I just don't understand how that's a factor.

Another thing is I have a letter here from my neighbor on the other side of the street. And I'll read that to you, it says "to the Planning Commission, our offices share a wall with Mr. Ian Danny at Performance Enhancement Professionals and have done so for over two years. Ian has proven to be an exemplary neighbor in every way. My personal office shares a wall with his training facility and I spend the majority of my time there each week. I've had zero problems with noise during my work week in those two years, and strongly recommend that he be allowed to remain there and operate his training facility with no interruption.

So what we have is a neighbor on one side who really doesn't have a noise problem and a neighbor on the other side who has a noise problem. Now, like I said, I've turned the stereo down and since this has really become a problem and it's really been brought to our attention what the disturbance is, the levels of that noise has been diminished drastically. To the extent that it's basically affected my clients, because some of them are upset that they can't play the music at the level they want to play it.

Now, I've taken responsibility by trying to limit that noise, by having rubber mats and flooring all over the place, by everything in there is covered in rubber, by positioning the speakers in different ways to try and minimize the noise that goes into the other suite. And I think at some point in time someone's got to say "Well, someone else on the other side of the wall's got to take some responsibility as well." I'm not really sure what else I can do and I think that I've been fair about the situation.

CHAIRMAN STEINBERG: Well, this sounds like a case for Judge Judy. But, I do thank you for your candor and you'll have a chance to respond in a few minutes. We're going to have a few questions before you do leave.

VICE-CHAIRMAN HEITEL: Just one question, there's some bids from contractors and some recommendations in here and so forth. It appears like some of the comments from one of them indicates that in their opinion 70 percent of the noise is kind of, I assume coming over the ceiling which is not partitioned above the drop ceiling. That's really the big problem as I understand?

IAN DANNY: I'm not an acoustics expert. I have no idea, I do not have a hard ceiling in my facility; but other than that, I can't tell you if that is exactly where the noise goes.

VICE-CHAIRMAN HEITEL: So you haven't been involved in any of these estimates or –

IAN DANNY: No, I have not. I leased this facility long before it was ever a condo facility and any CC&R's or any of that ever existed and that's sort of between the landlord and the other people as far as I've seen it.

VICE-CHAIRMAN HEITEL: Sure. Okay.

CHAIRMAN STEINBERG: So do you have a drop ceiling in your gym?

IAN DANNY: No, I do not.

CHAIRMAN STEINBERG: You do not. Have you priced that, that's probably one way to solve some of the problems?

IAN DANNY: No, I have not.

CHAIRMAN STEINBERG: I assume the dividing walls go to the underside of the deck so there is some sort of barrier from fire code standpoint. There's a lot of ways for sound to get through. I mean the outlets should be staggered in the walls that are common, and ductwork, and door seals; it's a real science. Let's hear, any other questions from anyone else? Commissioner Schwartz.

COMMISSIONER SCHWARTZ: I just want to say that I think we should be careful. Because I think that our Applicant brings up a good point that I think it would be unfair of us to impose additional, whether it be sound abatement in putting an acoustical ceiling in, or whatever those improvements may be. Because remember, the gentleman next door improved his warehouse space into offices; and so if you were putting offices next to offices-- if he didn't have those offices there, then he may not be experiencing the same amount of noise, because he'd probably have warehouse people in the back. The noise isn't coming from the offices, it's coming from the warehouse space. So maybe you want to buy like a CD with some saws on it and just play that really loud and that would just be indicative of what's allowed in the district. And then there can't be any complaints.

IAN DANNY: Like—let me just say something else. Even if it was a steel shop, I know how steel shops work and what would happen is you'd have the steel saws going and the guys in there would be playing music loud enough to hear it over the saws.

CHAIRMAN STEINBERG: Okay. Thank you so much, Ian.

All right, let's get back to public testimony. We'll hear the other side. Mary Curet, followed by Jodi Stiles and then Robert Bove.

MARY CURET: Good evening Mary Curet, 9319 North 94th Way, Suite 300. Just a few points I would like for you to hear is we do have the health studio on one side and on the other side we do have a air-conditioning company and in the back they do have a warehouse. And we do not have any noise issues coming from there that disturb the employees in the office.

Just to go back a little bit with history, we were told that the best way to speak on this issue was through the landlord of the property. So I am the person who initiated the first e-mail. Ian and I had a few discussions and he said "If there's any time an issue with noise, come over." One is I would not feel comfortable going over there, because of the type of clientele he has, obviously he doesn't want someone from next door ringing the bell saying, "Hey, it's a little too noisy." Or "It's very noisy." I hold a lot of meetings in the office, and I am in charge of the entire staff. The issues I have to say with the noise are sometimes having vulgarity in the music. You're sitting in a meeting of eight or nine people and you have to apologize for the sound you're hearing, for the words you're hearing. And I guess that's maybe one difference between a machine shop and hearing vulgar rap music.

We obviously want a resolution that will allow everybody to operate their businesses. But I guess my biggest fear is that if a permit is given and there are no conditions, we will then have no control over the issue and there will be no resolutions. And we'll have to continue sometimes with meetings with the sounds that are very, very hard to deal and to have business while these sounds are occurring.

CHAIRMAN STEINBERG: Thank you so much. Anyone have a question for Mary? Thank you.

MARY CURET: Thank you.

CHAIRMAN STEINBERG: Thank you. Jody Stiles. Please state your name and address for the record, Jodi.

JODI STILES: Hi, my name's Jodi Stiles, 9319 North 94th Way. First, I'd like to tell you my office is in the front where all the offices are. So I am in the front part. The sounds are deafening. We can hear the weights dropping, slamming, depending on the clientele that's in there, the vulgarity of the weights dropping, the music playing, and in our office where it's professional; it's very hard to conduct business. Being on the telephone you can hear this and it can interrupt a phone call because of this. So it's not just sounds that are in the back in the warehouse, it's the sounds that are upfront where all the offices are; and my office happens to be up there along with several other of our offices.

CHAIRMAN STEINBERG: Any questions for Jodi?

COMMISSIONER BARNETT: You're in Suite 100 or Suite 300?

JODI STILES: We're in Suite 300.

COMMISSIONER BARNETT: Okay, thanks.

CHAIRMAN STEINBERG: Thank you, Jodi. Robert Bove and that will conclude our public testimony.

ROBERT BOVE: Good evening, Robert Bove, 9319 North 94th Way, Suite 300. I own and operate 55 Jiffy Lube stores in Phoenix, I have five stores in Scottsdale, Arizona, which I've conducted and had for quite a few years.

The noise level is so deafening that it vibrates the pictures on my walls; and this is pretty loud. I know one of you said that, you know, maybe the music is good. But it's so loud that that bass vibrates the pictures. When they drop the weights and they say vulgar words, which I will not repeat here, it's very, very distracting, it's very, very embarrassing, and it's a —you know when I put my five stores in Scottsdale, I had to get use permits for every one of them. And I had to come before the Board and make sure that I would comply with all the things that are on those use permits. And I'm just asking you to make sure that I have the same courtesy now, because it's very difficult for me to conduct my business. Or should I just move my business, because, you know, everything is okay if you do that. Is it okay if I get speakers and blast out the rest of the tenants in my building? Is that okay? Or is it okay if I call the police every time this music starts and the weights start, and the cursing, and the swearing start. I don't think that's fair to me and I think there should be some type of stipulation put on the use permit, just like there was when I built my stores.

You know, same thing. That's what a use permits for. It's not just to be given out carte blanche. Okay, you know, let the buyer beware. Let the tenant beware. I had to turn my bays in a certain way when I built my stores; couldn't face them to the streets. So I'm just asking for quiet enjoyment. When we got this survey that Jim had-- Jim Keeley had done, I think it was about \$35,000 to soundproof his building. I had already insulated my walls when I did it on both sides, not only for myself but for my neighbors. Jim wrote me a letter back and said this is really your problem, I'll pay 5,000, Bob, you can pay 35,000. You know, I just don't think that is fair.

Use permits are for specific reasons and their specific reasons to protect the neighbors of the people that are there and not just to be given out buyer beware. I want to be a good neighbor, I want him—I don't want to put him out of business, I just want to use my offices and my little warehouse in the back in quiet enjoyment. There is a machine shop two offices, two suites from me that operates 24 hours a day. We don't have any noise like operates out of this place, absolutely not.

Any questions?

CHAIRMAN STEINBERG: Mr. Bove, I had a quick question. Why did you select an industrial park for a predominantly office use?

ROBERT BOVE: It just seemed like a good idea at the time. Greg Hoppaly approached me about that space when I bought that space when they subdivided that. I live down the street. I've lived in Scottsdale for twenty years. I've lived in that same zip code for twenty years.

CHAIRMAN STEINBERG: You own this space?

ROBERT BOVE: Yes.

CHAIRMAN STEINBERG: Okay. Have you gone to the HOA, similar to an HOA, the association to see if you can get the CC&R's enforced?

ROBERT BOVE: If I have to develop a civil suit against Mr. Keeley, I guess if you're not going to enforce anything on him, I'm going to have to do that. Because I can't use the space when that music goes on. I have to vacate my office.

CHAIRMAN STEINBERG: But this is your first step, you have not gone to the association?

ROBERT BOVE: Well, we've talked to them about it, yes.

CHAIRMAN STEINBERG: What was their response?

ROBERT BOVE: I don't exactly recall what they said.

CHAIRMAN STEINBERG: Okay. Any questions Commissioners?

COMMISSIONER HESS: I don't know that this question is for Mr. Bove, but I'm a little bit curious as to the letter that was referred to of the tenant who's on the opposite side as to why he is not at all disturbed and you're disturbed, if there's a common wall between—

ROBERT BOVE: Well that tenant also leases from Mr. Keeley.

COMMISSIONER HESS: I'm questioning what is the sound barrier between his office and this may not be a question for you, but I'm trying to understand why you would be so impacted and this tenant wouldn't be impacted at all. I don't know that he's subject to the landlord's wrath or something. I'd like to find out why there's a difference between what you hear and what the tenant on the other side hears.

COMMISSIONER STEINBERG: Who should address that?

COMMISSIONER HESS: Well, maybe the tenant on the other side can address it and maybe--

COMMISSIONER STEINBERG: Is that you, Mr. Freedman?

SETH FREEDMAN: Yes.

CHAIRMAN STEINBERG: This is kind of awkward. Are you done, Mr. Bove?

ROBERT BOVE: Any questions?

CHAIRMAN STEINBERG: We'll get to you in one second.

ROBERT BOVE: I just want to say one thing. I don't know where you gentlemen work or what your professions are, but if you worked in an office like I did and you had to listen to

this music, or your wife or your daughters or your children, and listen to the words and the noise and the clanging and the screaming and the yelling, I would be sure that you would probably try to do something.

COMMISSIONER SCHWARTZ: Excuse me, Mr. Bove, before you leave –

CHAIRMAN STEINBERG: We have a few questions.

COMMISSIONER SCHWARTZ: I'd just like to make a comment to that. It's not the purview of this Commission to judge somebody about the music they play or they enjoy. Unlike, I would not like my, you know, any children listening to certain types of music, it's not for me to tell this Applicant that he shouldn't listen to certain types of music because it's offending you. If you don't like that music you can choose not to listen to it. But it's not the purview of this Board to have that debate, nor do I think that we should even discuss it at this point.

CHAIRMAN STEINBERG: Commissioner Heitel. Mr. Bove, could you go back to the podium, please. Thank you very much.

VICE-CHAIRMAN HEITEL: I have a question for you, alluding to the question that I had earlier to the tenant. In our package here, there's some references to some contractors bids to remediate some of this. Was that done on your behalf or –

ROBERT BOVE: No. I think, um—

VICE-CHAIRMAN HEITEL: Or is that to Jim — that's the property owner.

ROBERT BOVE: Seth, I think you got those, didn't you?

VICE-CHAIRMAN HEITEL: Oh, okay. Because you alluded to 35,000, and I was just trying to figure out –

ROBERT BOVE: I think it was 35,000, wasn't it, Seth? I think the bid's in my bag.

VICE-CHAIRMAN HEITEL: And were those to remediate all of the walls, or in the entire four walls of the suite?

ROBERT BOVE: I think Seth would be more – Seth, do you remember?

VICE-CHAIRMAN HEITEL: Lynne, if you've got it?

ROBERT BOVE: Here they are.

VICE CHAIRMAN HEITEL: I've just got a sheet here. Maybe that's the same. That's what I was reading off. Okay, maybe I can ask him, Seth or Jim or whatever when one of them comes up to answer Commissioner Hess's.

CHAIRMAN STEINBERG: Okay.

SETH FREEDMAN: The first issue I'll answer is in regards to the difference of noise levels between Suite 100 and Suite 300 has somewhat to do with the construction of what

happened in 100. There was hard ceilings placed in Suite 100 versus acoustical ceilings that were put in 300. That has a little bit to do, when we did our noise there was a definite difference between the volume in Suite 300 and Suite 100 based upon that difference. That has a little bit to do with what –

When I was approached by Jim Keeley when this first came up to try to find a solution, I had contacted a couple of people for being in the contracting industry to try to find out a mediation to this. The problem was trying to get them out there. I did have them come out twice; they would never give me a written estimate. Both companies that I called, this was too small of a job to them. If they—they gave me verbal quotes as to what they believed the cost of this was going to take to remedy this solution as best as their ability. But there's no hundred percent guarantee, as you guys had mentioned before, if they went through all this \$30,000 worth of work that noise would not go through those walls at all. So the reason for the costly amount is as you said right now, in Suite 200, it is built out as a warehouse so all the sprinklers would have to be dropped, all the air-conditioning ducts would have to be dropped, fire suppressant was on here, the framing for the new hard ceiling, there would actually have to be new framing put up there as a hard lid; they said that the acoustical ceiling would not stop the noise going through there. So that's what you see in front of you, was just some verbal estimates that I had called as a favor to Jim to try and find out what this was approximately going to cost to do it.

VICE-CHAIRMAN HEITEL: Let me ask a dumb question, why are you dealing with putting in a hard ceiling when the problem seems to be the dividing wall between the disturbed next-door neighbor?

SETH FREEDMAN: I'm not a noise expert, but what they're telling me, it has nothing to do with that wall next door. It has a little bit to do with it, but most of it comes from the vibration of the ceiling, from the actual rafters.

CHAIRMAN STEINBERG: Structure-borne noise.

SETH FREEDMAN: It goes through anything; like you had mentioned, if they were sharing a duct at some point. There are a common sprinkler system throughout that entire building, so that the sprinkler pipe does go from Suite 1000 all the way to Suite 100. So vibrations can continue through that as well.

COMMISSIONER SCHWARTZ: It's a domino. I mean, when you look at – when sound abatement, everything that's attached to it, it continues all the way down the way.

CHAIRMAN STEINBERG: Okay. Thank you very much. Any other Commissioners? No? Are we ready for a motion?

COMMISSIONER SCHWARTZ: Quick comment

CHAIRMAN STEINBERG: You have a comment?

COMMISSIONER O'NEILL: I thought you were asking any other questions for them. Question for Staff, Kira when you investigated, it sounds like maybe you went on the internet or did some other things, the typical noise generated between small office and large office, I mean did you ever look at typical noise generated from industrial?

MS. WAUWIE: Yes. Commissioner O'Neill and Chairman Steinberg, I did look at those types of things. The noise generated by some of the more noise-making industrial uses such as machine shop and that type, increases in decibel level significantly compared to an office. As an example, manual machine tools are at an 80 decibel level, factory machinery at a 100 decibel level. So those are just a couple of examples.

COMMISSIONER O'NEILL: That's where—I agree with most here that I don't want to even go down the road of putting my finger on where the decibel level should be set. However, if we even started to entertain that I would not even entertain what the two levels are between small office and large office, because we're not talking about office zoning. We're talking about industrial zoning and industrial zoning it sounds like the two cases you gave us are 80 and 100 and you know, jet engines are allowed in this zoning, and I'm sure jet engines are a lot louder than that. So I just know, personally, I know I don't want to put my finger on a specific decibel. If I had to or if that's the direction we were going, I would lean for something, most likely even 100 or higher, so the 45 seems to be not necessarily where I would lean.

One other question, if the – these use permits—this is kind of a question I should probably know the answer to already, but the use permits are reapplied for every year or every—how frequently are –

MS. BRONSKI: Mr. Chairman, Commissioner O'Neill, use permits are perpetual unless the Commission decides to put a time limit on it; which the Commission—it is within the Commission's purview to do that.

COMMISSIONER O'NEILL: Okay. The only reason I ask is my assumption is when the business owner originally provided and was going through the permit process of getting their business permit and the City or somebody advised them that, in addition to this you need to get a use permit, that most likely at that time they would have requested their use permit before they even went into use and there would have been no discussion about – there wouldn't have been anything to discuss, because there wouldn't be any previous existing kind of condition. And this wouldn't have been discussed, they wouldn't have had a stipulation like this and that use permit would have been in perpetuity and if there were an issue with this again it would have to be taken up in some other area than here. I just wanted clarification on that, that's all.

CHAIRMAN STEINBERG: Thank you. Okay. I think we're ready for a motion, Commissioner Heitel.

COMMISSIONER HEITEL: I've got an idea that I'd just like to float to the rest of the Commissioner's here. I've got a tremendous amount of sympathy on the side of both of you people here. Part of the problem is the use permit applicant is sort of here after the fact and that's kind of a problem they created in a way. I certainly can relate to certain noise issues. I am very troubled even putting any kind of decibel requirement on here, not only because I have no regard for the way noise testing is done and I think it's a horrible process, but

I WOULD RECOMMEND APPROVAL OF 19-UP-2005, REMOVING STIPULATION NUMBER THREE AND ADDING THE STIPULATION THAT WITHIN TEN DAYS OF THE EFFECTIVE DATE OF THE CONDITIONAL USE PERMIT THE APPLICANT WILL PROVIDE THE AMOUNT OF FIFTEEN THOUSAND DOLLARS TO BE USED IN

CONJUNCTION WITH THE JIFFY LUBE OWNER NEXT DOOR TO USE IN REMEDIATION. ANY OTHER NUMBERS THAT MIGHT BE ABOVE THAT HE MAY HAVE TO GENERATE AND THE PROPERTY OWNERS WOULD HAVE TO DEAL WITH REMEDIATING TO THE EXTENT THAT THEY FEEL THEY CAN LIVE WITH EACH OTHER.

CHAIRMAN STEINBERG: Is that within our purview to do that, Donna?

MS. BRONSKI: Chairman, I don't believe that is within your purview to put some kind of monetary damage on.

VICE-CHAIRMAN HEITEL: Oh, no, it was not intend—it was a construction, the whole basis of the information provided to us is based on remediating sound by requiring construction activity. I'm just trying to limit that amount of construction activity to a certain amount of money.

CHAIRMAN STEINBERG: What if we do say, okay, this is a stip that we all agree upon and it accomplishes nothing, then what? Are we responsible for endorsing a certain number which had certain expectations?

MR. GRAY: Mr. Chairman, I would recommend that you not deal with a monetary amount. I think it doesn't achieve the goal and I think it doesn't appear proper either. So I think that there's some other way to achieve it through performance standard is proper for this Commission to do. Also, I think just as a procedural matter, Mr. Chairman, I think you have an Applicant that might want to make a rebuttal at some point before you make a motion. That's normally afforded the Applicant.

CHAIRMAN STEINBERG: We offered that to Ms. Lagarde . Is that something you're ready to do?

MR. GRAY: The Applicant.

CHAIRMAN STEINBERG: Well, you were responding to them. I know you're not, but I want to see if you're going to be giving a rebuttal based on what they presented. Because you went first, they went second. So before I give them back the ball.

COMMISSIONER O'NEILL: Mr. Chairman, excuse me, I'm sorry, maybe I'm out of order here, but she was a public testimony. We don't—unless I'm incorrect, public testimony we don't –

CHAIRMAN STEINBERG: It's a bit confusing to all of us up here what Ms. Lagarde 's role is.

COMMISSIONER SCHWARTZ: Ms. Lagarde , our public testimony is over though. I'm sorry, before—

MS. LAGARDE : Let me understand what I think the Chairman is offering me. That normally the procedure would have been, and I was a little surprised by it too. We would have had the Applicant's presentation, then I would have been able to address the points that the Applicant made, and then he would have the last word with rebuttal, which I think is fair and which he should certainly be able to do. I think what Mr. Steinberg was offering

me, was because I didn't get to respond to any of his comments, that he would let me respond. And let me put your minds at ease, I'm not going to respond to that, but to suggest that perhaps a stipulation with regard to the ceiling, which would be more limited, would be a helpful consideration without the number attached.

CHAIRMAN STEINBERG: Okay. So public testimony is essentially over at this point. So we're going to turn back to the Applicant for a quick response, if you have one. If not we're going to just go to a motion.

And when you do this, Ian, can you address the vulgarity and all the other things that came up, please.

IAN DANNY: First off, I think a picture's been painted that I simply moved into a space, started operating, and then now, after the fact am coming to ask for a use permit. I think the reality of the situation is I moved into the space – I was told through the landlord who was told by Harry Higgins of the City of Scottsdale that I was a gymnasium and nothing was required; I knew nothing about it. I applied for a license through the City of Scottsdale and, at that point in time, nothing was denied based on my zoning. And then it was renewed for subsequent years. So I had no idea I was actually required to have a use permit until I was operating for two and a half years.

Now, as far as the vulgarity is concerned, I understand the problem. I mean it's a changed world we live in. He's saying he wouldn't want his kids to listen to it, but right now one of our kids is at home picking up hookers and shooting up cops on an X-Box. In some sense I understand where he's coming from, but if that's the type of music that people play and that's what they choose to play and some of the music I wouldn't put in myself, but if that's what my clients want and it's an acceptable standard in 2006, then that's kind of the way it is. I'm not sure what else I can do about the vulgarity of it.

CHAIRMAN STEINBERG: I would just hope you'd be a good neighbor, because it's a professional group next to you and hopefully you are as well. You set the stage for your clientele as far as the culture in your gym. So it would be great if you could lower the sound and try to do away with some of the verbal assaults that we here sometimes on some of the stations. That's just my recommendation, personally.

IAN DANNY: I appreciate that and I think that attempts have been made. Over the course of the last four months, I have a hard time believing that the stereo's been a noise concern since its been brought to our attention.

CHAIRMAN STEINBERG: Okay.

IAN DANNY: Thank you.

CHAIRMAN STEINBERG: Thank you very much.

Okay. We're done with testimony. We're going to make a recommendation.

COMMISSIONER SCHWARTZ: I'll make a recommendation.

CHARIMAN STEINBERG: A motion.

COMMISSIONER SCHWARTZ: I'll make a motion. And I'd also like to say that somebody's going to obviously be on the opposite end of this and I really believe this is a civil matter. You have CC&R's and you can file complaints with the police department if the noise is unacceptable and they can follow through on whatever course of actions that the police department would like to and the prosecutor's offices. But this is not a purview of the Planning Commission for a use permit and it's not for us to impose the type of music that he plays, that's up to him and his clients. I hope you'll be a good neighbor, turn it down and you guys can move on.

MY RECOMMENDATION IS FOR APPROVAL OF CASE 19-UP-2005 WITH THE MODIFICATION THAT WE REMOVE STIPULATION THREE AND THERE BE NO REFERENCE TO DECIBELS REQUIRED IN THE STIPULATION SO STIPULATION THREE WOULD BE REMOVED BECAUSE THIS PROJECT MEETS THE USE PERMIT REQUIREMENTS.

CHAIRMAN STEINBERG: Okay. We have a motion.

COMMISSIONER BARNETT:

SECOND.

CHAIRMAN STEINBERG: All in favor.

THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0).

COMMISSIONER STEINBERG: Good luck. Please get along, guys.

WRITTEN COMMUNICATION

None.

ADJOURNMENT

COMMISSIONER SCHWARTZ:

I'LL MAKE A MOTION FOR ADJOURNMENT, UNLESS THERE'S SOMETHING ELSE.

COMMISSIONER STEINBERG: Let's do it.

COMMISSIONER BARNETT:

SECOND.

COMMISSIONER STEINBERG: Okay. We're adjourned; we'll see ya in a couple of weeks.

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission adjourned at 6:55 p.m.

Respectfully submitted,

APPROVED

A/V Tronics, Inc.